

Introduced by Senator Romero

February 22, 2005

An act to amend Section 299 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 953, as introduced, Romero. DNA: data bank.

Existing law provides that a person whose DNA profile has been included in the data bank under specified provisions shall, under specified conditions, be able to have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program.

This bill would make technical, nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 299 of the Penal Code is amended to
2 read:
3 299. (a) A person whose DNA profile has been included in
4 the data bank pursuant to this chapter shall have his or her DNA
5 specimen and sample destroyed and searchable database profile
6 expunged from the data bank program pursuant to the procedures
7 set forth in subdivision (b), if the person has no past or present
8 offense or pending charge which qualifies that person for
9 inclusion within the state's DNA and Forensic Identification
10 Database and Data Bank Program and there otherwise is no legal
11 basis for retaining the specimen or sample or searchable profile.

(b) Pursuant to subdivision (a), a person who has no past or present qualifying offense, and for whom there otherwise is no legal basis for retaining the specimen or sample or searchable profile, may make a written request to have his or her specimen and sample destroyed and searchable database profile expunged from the data bank program, if *any of the following requirements is satisfied*:

(1) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense as set forth in subdivision (a) of Section 296 or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact;

(2) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed;

(3) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code; ~~or~~.

(4) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense.

(c) (1) The person requesting the data bank entry to be expunged must send a copy of his or her request to the trial court of the county where the arrest occurred, or that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was arrested or, convicted, or adjudicated, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ.

(2) Except as provided below, the Department of Justice shall destroy a specimen and sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

1 (A) The written request for expungement pursuant to this
2 section.

3 (B) A certified copy of the court order reversing and
4 dismissing the conviction or case, or a letter from the district
5 attorney certifying that no accusatory pleading has been filed or
6 the charges which served as the basis for collecting a DNA
7 specimen and sample have been dismissed prior to adjudication
8 by a trier of fact, the defendant has been found factually
9 innocent, the defendant has been found not guilty, the defendant
10 has been acquitted of the underlying offense, or the underlying
11 conviction has been reversed and the case dismissed.

12 (C) Proof of written notice to the prosecuting attorney and the
13 Department of Justice that expungement has been requested.

14 (D) A court order verifying that no retrial or appeal of the case
15 is pending, that it has been at least 180 days since the defendant
16 or minor has notified the prosecuting attorney and the
17 Department of Justice of the expungement request, and that the
18 court has not received an objection from the Department of
19 Justice or the prosecuting attorney.

20 (d) (1) Upon order from the court, the Department of Justice
21 shall destroy any specimen or sample collected from the person
22 and any searchable DNA database profile pertaining to the
23 person, unless the department determines that the person is
24 subject to the provisions of this chapter because of a past
25 qualifying offense of record or is or has otherwise become
26 obligated to submit a blood specimen or buccal swab sample as a
27 result of a separate arrest, conviction, juvenile adjudication, or
28 finding of guilty or not guilty by reason of insanity for an offense
29 described in subdivision (a) of Section 296, or as a condition of a
30 plea.

31 (2) The Department of Justice is not required to destroy
32 analytical data or other items obtained from a blood specimen or
33 saliva, or buccal swab sample, if evidence relating to another
34 person subject to the provisions of this chapter would thereby be
35 destroyed or otherwise compromised.

36 (3) Any identification, warrant, probable cause to arrest, or
37 arrest based upon a data bank or database match is not
38 invalidated due to a failure to expunge or a delay in expunging
39 records.

1 (e) Notwithstanding any other provision of law, the
2 Department of Justice DNA Laboratory is not required to
3 expunge DNA profile or forensic identification information or
4 destroy or return specimens, samples, or print impressions taken
5 pursuant to this section if the duty to register under Section 290
6 or 457.1 is terminated.

7 (f) Notwithstanding any other provision of law, including
8 Sections 17, 1203.4, and 1203.4a, a judge is not authorized to
9 relieve a person of the separate administrative duty to provide
10 specimens, samples, or print impressions required by this chapter
11 if a person has been found guilty or was adjudicated a ward of
12 the court by a trier of fact of a qualifying offense as defined in
13 subdivision (a) of Section 296, or was found not guilty by reason
14 of insanity or pleads no contest to a qualifying offense as defined
15 in subdivision (a) of Section 296.